

Respondent.

On or about October 25, 2004, Kathi Vontz, Clerk of the Commission, filed a Notice of Hearing which was sent to the Respondent by U.S. Mail, postage prepaid, and delivered by hand to the Petitioner's General Counsel. The Notice of Hearing advised that a public hearing on the Petition would be hld on December 18, 2004, commencing at 9:15 a.m., in the State Board Hearing Room, Sixth Floor, Nebraska State Office Building, 30 Centennial Mall South, Lincoln, Nebraska.

The Notice further advised that the hearing would be held before a designated hearing committee of the Commission, with Samuel Van Pelt serving as legal counsel to advise the chairperson in the performance of her duties. On November 18, 2004, the Petitioner, by and through his general counsel, requested that a prehearing conference in the above case be held, and the same was scheduled for December 8, 2004. On December 7, 2004, David B. Eubanks, an attorney at law with the firm of Pahlke, Smith, Snyder, Pettitt & Eubanks, entered his appearance on behalf of the Respondent, and moved to continue the hearing previously scheduled for December 18, 2004.

On December 8, 2004, a prehearing conference was held with Brian Halstead participating as the Petitioner's General Counsel, David Eubanks participating as the Respondent's attorney, and Samuel Van Pelt conducting the same. An Order setting forth the action taken place at such prehearing conference was entered on the same date, has been filed herein, and has been mailed to all of the parties by U.S. mail, postage prepaid, and delivered by hand to the Petitioner's General Counsel. In addition to setting forth a discovery schedule, the Order approved the agreement of all parties that the Respondent's Motion to Continue be granted, and that the hearing be rescheduled for February 5, 2005, commencing at 9:05 a.m., to be held in the same location as specified in the previous Notice of Hearing. Subsequently, the parties have filed the exhibit and witness lists as required by the Order on Prehearing Conference.

The Petition and the Respondent's responses thereto came on for hearing at the above date, time and place before a hearing panel of the Commission consisting of Commission members Jay Bellar, Kenneth Heinz, Marie Meyers, Linda Mihm, Catherine Simon, Loretta Tebbe, James Thomas and Debra Wallman. Commissioner Simon served as chairperson. The proceedings were reported by Carolyn Freeman of General Reporting Services, Lincoln, Nebraska. The Petitioner appeared by Brian Halstead, General Counsel. The Respondent appeared with his attorney, David Eubanks. Exhibits and testimony were received in evidence, and counsel for both parties made their closing arguments.

Thereupon, the Commission adjourned and deliberated on the record before it, and makes the following findings of fact, conclusions of law, and recommendation:

II. FINDINGS OF FACT

1. The Petitioner, Douglas D. Christensen, is the Commissioner of Education for the State of Nebraska. The Respondent holds a Nebraska public schools teaching certificate number 5550, endorsed in Physical Education K-12, Coaching 7-12, Driver Education 7-12, and Biological Science 7-12, with an expiration date of August 31, 2006.

2. At all times relevant herein, the Respondent was employed as a teacher and coach by the Gordon Public Schools until his contract and employment were cancelled and terminated on September 11, 2003.

3. On or about January 21, 2003, a protection order was entered in the District Court of Platte County, Nebraska, prohibiting the Respondent from having contact with Mary M. Fisher, an employee of the Humphrey Public Schools.

4. On January 31, 2003, during a girls' basketball game between Gordon and Mitchell, the Respondent used foul language and made demeaning comments about Mitchell High School.

5. On or about April 21, 2003, the Respondent was involved in an incident at the home of Mary M. Fisher, as a result of which he was found guilty of attempted first degree criminal trespass, a Class II misdemeanor.

6. During June 2003, the Respondent submitted two insufficient funds checks for the payment of rent on school district property.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this case, and all proceedings have been in accordance with applicable Constitutional, Statutory, and Regulatory requirements.

2. The Petitioner has failed to prove by a preponderance of the evidence that the Respondent committed an immoral act and an act of moral turpitude in violation of Neb. Rev. Stat. Section 79-866(2) (Reissue 2003); and Title 92, Nebraska Administrative Code, Chapter 27, Section 004.04E (effective date: December 25, 1989). The Petitioner has further failed to prove by a preponderance of the evidence that the Respondent made fraudulent statements and failed to disclose material facts for which he was responsible, in violation of Title 92, Nebraska Administrative Code, Chapter 27, Section 004.02D (same effective date); that the Respondent exploited a professional relationship with school patrons and school board members for personal gain and private advantage, in violation of Section 004.02E; that the Respondent sexually harassed a school patron in violation of Section 004.02F (same effective date); that the Respondent engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation in the performance of his professional duties, in violation of Section 004.02H (same effective date); that the Respondent deliberately suppressed or distorted subject matter for which he was responsible, in violation of Section 004.03B (same effective date); that the Respondent failed to make a reasonable effort to protect students from conditions which interfered with the learning process or were harmful to their health and safety, in violation of Section 004.03C (same effective date); that the Respondent failed to provide leadership and direction for others by appropriate example, in violation of Section 005.09D (same effective date); and that the Respondent failed to appropriately control his emotions, in violation of Section 005.10C (same effective date) all of the above title and chapter of the Nebraska Administrative Code.

The Petitioner has proven by a preponderance of the evidence that the Respondent misrepresented an institution with which he was affiliated, and failed to take added precautions to distinguish between his personal and the institutional views, in violation of Title 92, Nebraska Administrative Code, Chapter 27, Section 004.04A (effective date: December 25, 1989).

IV. DISCUSSION

A majority of six of the eight Commission members hearing this case agreed that the Respondent had misrepresented Gordon Public Schools, an institution with which he was then affiliated, and also failed to take additional precautions to distinguish between his personal views

and the institution's views, in his conduct on January 31, 2003, following a girls' basketball game in Mitchell, Nebraska.

Four Commission members (one short of a majority) found that the Respondent failed to provide leadership and direction for others by appropriate example as the result of his conduct on January 31, 2003, in his writing two insufficient funds checks to the Gordon Public School District, and further, in relationship to the protection order entered in the District Court of Platte County, Nebraska, on or about January 21, 2003, which resulted in his being found guilty of attempted first degree criminal trespass on April 21, 2003. Respecting all other allegations in the Petitioner's Petition, a majority of the Commission members felt the Petitioner had failed to prove these allegations by a preponderance of the evidence.

A majority of all hearing committee members except one agreed that considering the seriousness of the Respondent's conduct and consistent with past recommendations of this Commission, as well as the decisions of the State Board of Education, the Respondent should be issued a public reprimand respecting his conduct, but that suspension or revocation of his teaching certificate was not warranted under the circumstances.

V. ORDER

Therefore, the Commission respectfully orders that David Irwin, holder of Nebraska public schools teaching certificate number .5550, endorsed in Physical Education K-12, Coaching 7-12, Driver Education 7-12, and Biological Science 7-12, with an expiration date of August 31, 2006, be issued a public reprimand for misrepresenting the Gordon Public Schools and failing to take additional precautions to distinguish between his personal views and the institutional views, in violation of Title 92, Nebraska Administrative Code, Chapter 27, Section 004.04A (effective date: December 25, 1989).

Dated this 15th day of February, 2005.


Catherine Simon, Chairperson
Hearing Committee
Nebraska Professional Practices Commission

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above Findings of Fact, and Conclusions of Law, and Recommendation of the Commission, dated February 17, 2005, for Case Number 04-15, was mailed to David Irwin, Respondent, David Eubanks, Respondent's attorney, U.S. Mail postage prepaid, and delivered by hand to Brian Halstead, attorney for the Petitioner, on this 17th day of February, 2005, at the following addresses.

David Irwin
Respondent
Box 71
Sumner, NE 68878

Brian Halstead
Attorney for Petitioner
301 Centennial Mall South
Lincoln, NE 68509

David Eubanks
Attorney for Respondent
1904 First Avenue
P.O. Box 1204
Scottsbluff, NE 69363-1204



Kathi Vontz, Clerk of the Commission
NEBRASKA PROFESSIONAL PRACTICES COMMISSION